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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

GUSTAVO ROCHA,

Defendant and Appellant.

B168303

(Los Angeles County
Super. Ct. No. TA068690)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Gary R. Hahn, Judge. Affirmed.

Law Office of E. G. Ballantyne and Enid G. Ballantyne for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and
James William Bilderback II, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted appellant Gustavo Rocha of one count of carjacking in violation of Penal Code section 215, subdivision (a).¹ The jury found true the allegation that appellant personally used a firearm in the commission of the crime within the meaning of section 12022.53, subdivision (b). The trial court sentenced appellant to a term of 13 years in state prison consisting of the low term of 3 years on count 1 and a consecutive term of 10 years for the firearm enhancement.

Appellant appeals on the ground that a firearm-use enhancement was unfairly imposed upon him pursuant to section 12022.53, subdivision (b) rather than pursuant to section 12022.5, subdivision (a)(2).

FACTS

Because appellant's only issue concerns sentencing, we briefly recite the facts in the light most favorable to the judgment below. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Anthony Aguilar was chatting with a female friend in Progress Park in the City of Paramount when he noticed a man walk by. The man passed the couple and then walked back towards them. Aguilar realized he knew the man, who was appellant, from having gone to school with him. Appellant approached Aguilar and told him that he wanted his car. Aguilar had driven his red 1989 Camaro to the park. Aguilar was at first incredulous, but he realized appellant was serious when appellant took out a firearm. After attempting to stall appellant by pretending the car would not start, Aguilar finally allowed appellant to take the car when appellant said he was losing his patience. When Aguilar recovered the abandoned car several weeks later, it was missing the license plates, the stereo, a front-end cover, and several other items. The face plate of the stereo was found in a closet used by appellant when police executed a search warrant at his home. Appellant later told police he loved Camaros, and when he saw the car, he wanted it. He wrote a confession saying that he stole the car. He said he had found the gun in the park, and he threw it away in a dumpster in the park after taking Aguilar's car.

¹ All further references to statutes are to the Penal Code unless stated otherwise.

DISCUSSION

Appellant asserts that there are two special allegations for personal use of a firearm in the commission of a carjacking—section 12022.5, subdivision (a)(2) and section 12022.53, subdivision (b). He contends the trial court should have imposed the former rather than the latter because section 12022.5, subdivision (a)(2) allowed the trial court to choose a low, middle, or upper term and was the more specific of the two statutes. Respondent counters that the enhancement for carjacking pursuant to section 12022.5, subdivision (a)(2) was repealed prior to the commission of the instant carjacking on January 25, 2003.

Respondent is correct. Effective January 1, 2003, section 12022.5, subdivision (a)(2) of the Penal Code was repealed. According to the text of Assembly Bill No. 2173, the Legislature recognized “that the conduct punished under [section 12022.5, subdivision (a)(2)] is now subject to greater punishment under subdivision (b) of Section 12022.53 of the Penal Code.” (Stats. 2002, ch. 126, § 12(a), West’s Cal. Leg. Serv. 2002, pamphlet No. 3, p. 559; see *People v. Woods* (2004) 119 Cal.App.4th 1117, 1125.) Appellant was appropriately charged with a firearm-use allegation pursuant to section 12022.53, subdivision (b) only, which the jury found true, and his argument is without merit.

DISPOSITION

The judgment is affirmed.

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_____, J.
DOI TODD

We concur:

_____, P. J.
BOREN

_____, J.
NOTT